IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COMPANY SCHEME PETITION NO. 648 OF 2014
CONNECTED WITH
COMPANY SUMMONS FOR DIRECTION NO. 287 OF 2014

Atom Investment And Leasing Company Private Limited

….Petitioner Company

(Transferor Company No. 1)

AND

COMPANY SCHEME PETITION NO. 649 OF 2014
CONNECTED WITH
COMPANY SUMMONS FOR DIRECTION NO. 288 OF 2014

Avenue Finvest Private Limited ….Petitioner Company

(Transferor Company No. 2)

AND

COMPANY SCHEME PETITION NO. 650 OF 2014
CONNECTED WITH
COMPANY SUMMONS FOR DIRECTION NO. 289 OF 2014

Basil Exports Private Limited ….Petitioner Company

(Transferor Company No. 3)

AND

COMPANY SCHEME PETITION NO. 651 OF 2014
CONNECTED WITH
COMPANY SUMMONS FOR DIRECTION NO. 290 OF 2014

Chitran Investment Private Limited ….Petitioner Company

(Transferor Company No. 4)

AND

COMPANY SCHEME PETITION NO. 652 OF 2014
CONNECTED WITH
COMPANY SUMMONS FOR DIRECTION NO. 291 OF 2014

Clove Investment and Leasing Private Limited

….Petitioner Company

(Transferor Company No. 5)

AND

COMPANY SCHEME PETITION NO. 653 OF 2014
CONNECTED WITH
COMPANY SUMMONS FOR DIRECTION NO. 292 OF 2014

Goldcrest Software Solutions Limited ….Petitioner Company

(Transferor Company No. 6)

AND

COMPANY SCHEME PETITION NO. 654 OF 2014
CONNECTED WITH
COMPANY SUMMONS FOR DIRECTION NO. 293 OF 2014

Marmalade Construction Private Limited ….Petitioner Company

(Transferor Company No. 7)

AND

COMPANY SCHEME PETITION NO. 655 OF 2014
CONNECTED WITH
COMPANY SUMMONS FOR DIRECTION NO. 294 OF 2014

Mist Investment and Trading Private Limited

….Petitioner Company

(Transferor Company No. 8)

AND

COMPANY SCHEME PETITION NO. 656 OF 2014
CONNECTED WITH
COMPANY SUMMONS FOR DIRECTION NO. 295 OF 2014

Ajay Finvest Private Limited ….Petitioner Company

(Transferor Company No. 9)

AND

COMPANY SCHEME PETITION NO. 657 OF 2014

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO. 296 OF 2014

Goldcrest Securities & Commodities

Private Limited ….Petitioner Company

(Transferee Company)

In the matter of the Companies Act,1956
AND
In the matter of Sections 391 to 394 of the Companies Act, 1956.
AND

In the matter of the Scheme of Amalgamation of
Atom Investment And Leasing Company Private Limited, Transferor Company No. 1
Avenue Finvest Private Limited, Transferor Company No. 2
Basil Exports Private Limited, Transferor Company No. 3
Chitran Investment Private Limited, Transferor Company No. 4
Clove Investment And Leasing Private Limited, Transferor Company No. 5
Goldcrest Software Solutions Limited, Transferor Company No. 6
Maramalade Construction Private Limited, Transferor Company No. 7
Mist Investment And Trading Private Limited, Transferor Company No. 8
Ajay Finvest Private Limited,
Transferor Company No. 9 with
Goldcrest Securities & Commodities Private Limited, Transferee Company.

Called for Hearing

Mr. Sanjay Udeshi and Mr. Darshan Ashar Advocates i/b M/s Sanjay Udeshi & Co, Advocate for the Petitioners.

Mr. C.J. Joy a/w A.R. Varma i/b Mr. H.P Chaturvedi for the Regional Director.

Mr. S. Ramakantha Official Liquidator present in C.S.P. No. 648 to 656 of 2014.

CORAM: S.J. KATHAWALLA J.

DATE : 9th January, 2015

P.C.:

1. Heard Counsel for the parties. None appears before the Court to oppose the Scheme nor any party has contraverted any averments made in the petition.

2. The sanction of the Court is sought under Sections 391 to 394 of the Companies Act, 1956, to Scheme of Amalgamation of Atom Investment And Leasing Company Private Limited, Transferor Company No. 1 Avenue Finvest Private Limited, Transferor Company No. 2 Basil Exports Private Limited, Transferor Company No. 3 Chitran Investment Private Limited, Transferor Company No. 4 Clove Investment And Leasing Private Limited, Transferor Company No. 5 Goldcrest Software Solutions Limited, Transferor Company No. 6 Maramalade Construction Private Limited, Transferor Company No. 7 Mist Investment And Trading Private Limited, Transferor Company No. 8 Ajay Finvest Private Limited Transferor Company No. 9 with Goldcrest Securities & Commodities Private Limited, Transferee Company.

3. The Learned Counsel for the Petitioners state that the Transferor Company No. 1, is engaged in business of investments in shares, securities, debentures, debentures- stock, etc and also to carry on the business of leasing and lease operations. The Transferor Company No. 2 is engaged in business of financing and/or assisting in financing industrial enterprises and to deal in any shares, units, stocks, debentures, etc. by original subscription, tender or otherwise and to subscribe for the same, either conditionally or otherwise, and to underwrite or sub- underwrite or guarantee the subscription thereof, to purchase and sell units. The Transferor Company No. 3 is engaged in the business of exporting, importing and supplying forest, agricultural, sea, marine, dairy, poultry, etc. and to do business and things required for the purpose of acquiring recognition as Export house and to act as general agents, distributors, authorized representatives, selling agents, brokers and suppliers of manufacturers, wholesalers and traders for

India and abroad. The Transferor Company No. 4 is engaged in the business of an investment company and to buy, invest in and acquire and hold shares, stock debenture, debenture- stock, bonds, obligations and securities issued or guaranteed by it and company constituted or carrying on business in India or elsewhere. The Transferor Company No. 5 is engaged in the business of investment company and to undertake and transact the business of investments in shares, securities, debentures etc. and to carry on the business as underwriters, sub-underwriters, brokers, sub- brokers of stock, shares, debentures etc. and also to carry on the business of leasing and lease operations. The Transferor Company No. 6 is engaged in the business of developing, marketing, importing, exporting all kinds of computer software, software products and to undertake work relating to information technology enabled services and computer consultancy services. The Transferor Company No. 7 is engaged in the business of acquiring, buying, selling or otherwise and to carry on construction work of building houses, garages, halls, theatres or other landed properties and to consolidate and connect and sub divide properties by leasing or otherwise disposing of the same. The Transferor Company No. 8 is engaged in the business of Investment Company and to buy, purchase or otherwise acquire become interested in, deal in, invest in, hold, sell or otherwise dispose of, shares, debentures, stocks, units etc. and to carry on the business as merchants, traders, buyers, distributors etc. on the basis of ready delivery or forward contracts on commission basis or otherwise. The Transferor Company No. 9 is engaged in the business of a finance company and to undertake and carry on execute all kinds of financial operations and to invest in and deal with moneys of the company and acquire, sell, transfer, subscribe, hold, dispose of and otherwise deal in shares, stocks, debenture, stocks etc. and other related business. The Transferee Company is engaged in the business of investment of capital and other funds and trade or deal in shares, stocks, debentures, debenture stock etc. and to carry on the business of brokerage in all kinds of shares, stocks, debentures etc. or other financial instruments as may be permitted by the recognized stock exchanges deal in all commodities and commodity derivatives in spot markets as well as futures and derivatives and to act as market makers, finance brokers, sub brokers, underwriters, sub underwriters, providers of service for commodity related activities permitted under the laws of India.

4. The Proposed Scheme of Amalgamation will be beneficial to the Petitioner Companies since the Amalgamated Company will have greater efficiency in overall business including economies of scales, cash management of the amalgamated entity and unfettered access to cash flow generated by the combined business which can be deployed more efficiently to fund financing, leasing, manufacturing, import export activities and construction related activities and their growth opportunities in the businesses of the Companies, to maximize shareholder value.

5. The Petitioner Companies have approved the said Scheme of Amalgamation by passing the Board Resolution which is annexed to the respective Company Scheme Petition.

6. The Learned counsel for the Petitioner Companies states that the Petitioner Companies have complied with all the directions passed in Company Summons for Direction and that the Company Scheme Petition have been filed in consonance with the orders passed in Summons for Direction.

7. Counsel appearing on behalf of the Petitioner Companies state that the Petitioners have complied with all requirements as per directions of this Court and they have filed necessary affidavits of compliance in the court. Moreover, the Petitioner Companies through its counsel undertake to comply with all statutory requirements, if any, as required under the Companies Act, 1956 and the Rules made thereunder. The said undertaking is accepted.

8. The Regional Director has filed an affidavit on 6th day of January, 2015 stating therein save and except stated in paragraph 6 (a), (b), (c), and (d) of the said Affidavit, it appears that the Scheme is not prejudicial to the interest of the shareholders and public. In paragraph 6 (a), (b), (c), and (d) of the said Affidavit, it is stated that;-

"6. That the Deponent further submits that,

(a) With reference to the clause 13(h) of the scheme, it is submitted that the surplus arising out of the scheme is due to transfer of capital assets of Transfer Companies to Transferee Company and as such that part of reserve cannot be considered as free reserve of the Transferee Company and shall not for forming part of net worth of the Transferee Company.

(b) Clause 13(e) of the scheme provides for accounting adjustment. In this regard, it is submitted that in addition to compliance of AS 14 Transferee Company shall pass such accounting entries as may be necessary in connection with the scheme to comply with other applicable accounting standards such AS-5 etc.

(c) That the Deponent further submits that the Tax issues if any arising out of this scheme shall be subject to final decision of Income Tax Authority and approval of the scheme by Hon'ble High Court may not deter the Income Tax Authority to scrutinize the tax returns filed by the petitioner company after giving effect to the amalgamation, The decision of the Income Tax Authority is binding on the petitioner company.

(d) It is observed from clause 2 of the scheme, that the business activities of the companies forming part of the scheme also relates to trade in commodity derivatives in spot exchange. In this regard the petitioner company was directed to clarify whether any of the companies forming part of the scheme has traded through National Spot Exchange Limited and if so, any amount is due and payable by Petitioner Company for the purchase, sale of commodity products through the Platform of National Spot Exchange Limited. In this regard, the petitioner company through their Advocate M/s. Sanjay Udeshi & Co letter dated 16/12/2014 (copy of the same annexed hereto and marked as Exhibit 'D', clarified as follows:-

" It is hereby clarified that the company is not having active participation of commodity trading through NSEL and does not have any outstanding dues as to be settled by the company".

In the said letter it has been further stated that "however, the company has its three clients who have made transactions in NSEL in the form of *investments through the Transferee Company, being broker and therefore has no liabilities". The correctness of the claim made by the petitioner that they have no dues in the transactions carried on through NSEL could not be ascertained at this stage by the deponent. Without prejudice to the above, it is submitted that the approval of the scheme by this Hon'ble High Court may not deter the Market Regulator viz Forward Market commission to take appropriate legal action against them either directly or through National Spot Exchange Limited.*

9. As far as the content of paragraph 6 (a) of the Affidavit of Regional Director is concerned, counsel appearing for the Petitioner Companies undertakes that surplus arising out of the scheme is due to transfer of capital assets of Transferor Companies to Transferee Company and as such that part of reserve cannot be considered as free reserve of the Transferee Company and shall not form part of net worth of the Transferee Company.

10. As far as the content of paragraph 6 (b) of the Affidavit of Regional Director is concerned, counsel appearing on behalf of the Petitioner Companies undertakes to follow the accounting treatment provided in the Scheme and to comply with requirements of the relevant applicable accounting standards.

11. As far as the content of paragraph 6 (c) of the Affidavit of Regional Director is concerned, counsel appearing on behalf of the Petitioner Companies undertakes that the Transferor Companies and the Transferee Company are bound to comply with the applicable provisions of the income Tax Act and all tax issues arising out of Scheme will be met and answered in accordance with the law.

12. As far as the content of paragraph 6 (d) of the Affidavit of Regional Director is concerned, counsel appearing on behalf of the Petitioner Companies states that if there are any legal actions taken by the Forward Market Commission with respect to the above, the same shall be defended by the Petitioner Company.

13. Learned Counsel for the Transferee Company has tendered an affidavit dated 8th January, 2015 of Mr. Manish Chheda the Authorised Signatory of the Transferee Company in respect of objection raised by the regional Director in their Affidavit dated 6th January, 2015 and undertakes to comply the same as mentioned in paragraph 4 to 7 of the said affidavit.

14. The Learned Counsel for the Regional Director on instructions of Mr. M. Chandana Muthu, Joint Director, in the office of the Regional Director, Ministry of Corporate Affairs, Western Region, Mumbai states that they are satisfied with undertaking given by the Petitioner Companies mentioned hereinabove. The said undertaking is accepted.

15. The Official Liquidator has filed his report on 10th December, 2014 stating therein that the affairs of the Transferor Companies have been conducted in a proper manner that the Transferor Companies may be ordered to be dissolved.

16. From the material on record, the Scheme appears to be fair and reasonable and is not violative of any provisions of law and is not contrary to public policy.

17. Since all the requisite statutory compliances have been fulfilled, the Company Scheme Petition No. 648 to 656 of 2014 filed by the Transferor Company No. 1 to 9 is made absolute in terms of prayer clause (a) and Company Scheme Petition No. 657 of 2014 filed by the Transferee Company is made absolute in terms of prayer clause (a).

18. The Petitioner to lodge a copy of this order and the Scheme duly authenticated by the Company Registrar, High Court (O.S.), Bombay, with the concerned Superintendent of Stamps, for the purpose of adjudication of stamp duty, payable, if any, on the same within 60 days from the date of this Order.

19. Petitioner is directed to file a copy of this order alongwith a copy of Scheme of Amalgamation with the concerned Registrar of Companies, electronically, alongwith E-Form INC 28 in addition to physical copy, as per the provision of the Companies Act 1956 / 2013

20. Petitioners in all the Company Scheme Petitions to pay costs of Rs.10,000/- each to the Regional Director, Western Region, Mumbai. The Petitioner in Company Scheme Petition No. 648 to 656 of 2014 to pay a sum of Rs.10,000/- to the Official Liquidator, High Court, Bombay, towards his costs. Costs to be paid within four weeks from today.

21. Filing and issuance of the drawn up order is dispensed with.

22. All concerned regulatory authorities to act on a copy of this order alongwith the Scheme duly authenticated by Company Registrar, High Court, Bombay.

(S.J. Kathawalla J.)